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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-180

13 JAMES FRANKLIN POWERS, JR.
13812 Acoro Street
Cerritos, CA 90703

A C C U S A T I O N

14 Registered Nurse License No. 620609

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about June 30, 2003, the Board of Registered Nursing (Board)
23 issued Registered Nurse License No. 620609 to James Franklin Powers, Jr. (Respondent). The
24 Registered Nurse License was in full force and effect at all times relevant to the charges brought
25 herein and expired on September 30, 2008.

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3. This Accusation is brought before the Board, under the authority of the

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1 5. Section 2750 provides, in pertinent part, that the Board may discipline any
2 licensee, including a licensee holding a temporary or an inactive license, for any reason provided
3 in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4 6. Section 2761 of the Code states:

5 “The board may take disciplinary action against a certified or licensed nurse or
6 deny an application for a certificate or license for any of the following:

7 “(a) Unprofessional conduct, which includes, but is not limited to, the
8 following:

9

10 “(f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of the
12 conviction shall be conclusive evidence thereof.”

13 7. Section 2762 of the Code states:

14 “In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
16 under this chapter to do any of the following:

17 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
18 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
19 or administer to another, any controlled substance as defined in Division 10 (commencing with
20 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
21 defined in Section 4022.

22

23 “(c) Be convicted of a criminal offense involving the prescription, consumption,
24 or self-administration of any of the substances described in subdivisions (a) and (b) of this
25 section, or the possession of, or falsification of a record pertaining to, the substances described in
26 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
27 thereof.”

28 8. Section 2764 of the Code provides, in pertinent part, that the expiration of

1 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
2 against the licensee or to render a decision imposing discipline on the license.

3 **REGULATORY PROVISIONS**

4 9. California Code of Regulations, title 16, section 1444 states:

5 "A conviction or act shall be considered to be substantially related to the
6 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
7 present or potential unfitness of a registered nurse to practice in a manner consistent with the
8 public health, safety, or welfare."

9 **COST RECOVERY**

10 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
11 request the administrative law judge to direct a licensee found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 **CONTROLLED SUBSTANCES**

15 11. "Methamphetamine," is a Schedule II controlled substance as designated
16 by Health and Safety Code section 11055(d)(2) and is categorized as a "dangerous drug"
17 pursuant to Business and Professions Code section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of Substantially Related Crimes)**

20 12. Respondent is subject to disciplinary action under section 2761,
21 subdivision (f) and section 490, in conjunction with California Code of Regulations, title 16,
22 section 1444, in that Respondent has been convicted of crimes substantially related to the
23 qualifications, functions or duties of a registered nurse, as follows:

24 a. On or about September 21, 2007, Respondent was convicted of one
25 misdemeanor count of violating Health and Safety Code section 11377, subdivision (a)
26 (possession of a controlled substance) in the criminal proceeding entitled *The People of the State*
27 *of California v. James Franklin Powers, Jr.* (Super. Ct. Los Angeles County, 2007, Case No.
28 5LC06400). Respondent was denied probation and sentenced to 180 days in Los Angeles County

substance). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraphs (a) and (c), inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Conviction Involving the Possession of a Controlled Substance)

14. Respondent is subject to disciplinary action under section 2761, subdivision (a) and section 2762, subdivision (c), in that on or about April 11, 2007 and September 21, 2007, Respondent was convicted of a crime involving the possession of a controlled substance. Complainant refers to, and by this reference incorporates allegations of paragraph 12, subparagraphs (a) and (c), inclusive, as though set forth fully.

DISCIPLINE CONSIDERATIONS

15. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges:

a. In or about 1996, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) (being under the influence of alcohol or drugs) in the criminal proceeding entitled *The People of the State of California v. James Franklin Powers, Jr.* (Super. Ct. Los Angeles County, 1996, Case No. _____).

b. On or about July 28, 1993, Respondent was convicted of two misdemeanor counts of violating Vehicle Code section 23152, subdivision (a) (being under the influence of alcohol or drugs) in the criminal proceeding entitled *The People of the State of California v. James Franklin Powers, Jr.* (Super. Ct. Los Angeles County, 1993, Case No. 93M03040).

c. On or about February 24, 1992, Respondent was convicted of one misdemeanor count of violating Penal Code section 243, subdivision (d) (battery with serious bodily injury) in the criminal proceeding entitled *The People of the State of California v. James Franklin Powers, Jr.* (Super. Ct. Los Angeles County, 1991, Case No. 91M06044).

d. On or about October 28, 1986, Respondent was convicted of one misdemeanor count of violating Penal Code section 647, subdivision (f) (disorderly conduct) in the criminal proceeding entitled *The People of the State of California v. James Franklin Powers,*

1 Jr. (Super. Ct. Los Angeles County, 1986, Case No. M43181).

2 **PRAYER**


3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Board issue a decision:

5 1. Revoking or suspending Registered Nurse License No. 620609, issued to
6 Respondent.

7 2. Ordering Respondent to pay the Board of Registered Nursing the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: 2/23/09

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14 
15 RUTH ANN TERRY, M.P.H., R.N.
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant
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